

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Biennial Regulatory Review -)
Amendment of Parts 0, 1, 13, 22,)
24, 26, 27, 80, 87, 90, 95, 97, and)
101 of the Commission's Rules to)
Facilitate the Development and Use)
of the Universal Licensing System)
in the Wireless Telecommunications)
Services.)

WT Docket No. 98-20

MAY 22 1998

To: The Commission

Comments of American Automobile Association

The American Automobile Association (AAA), by its attorneys and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments in the above captioned proceeding.

Interest of AAA

AAA is a not-for-profit organization that is dedicated to promoting the safety of the American driving public. It is the largest membership organization in the United States. Through its clubs and related towing contractors, AAA provides emergency road services (and many other services) to its members and to the public. Its emergency road service vehicles clear accident scenes thereby removing dangerous obstacles in the roadway which can lead to additional injuries and property damage. AAA thereby substantially reduces urban gridlock as well, which can otherwise waste millions of man hours each year as people sit in traffic caused by an accident or disabled vehicle. AAA and its clubs also respond on an emergency basis when motorists are stranded in freezing temperatures, dangerous neighborhoods, or other threatening situations. These services directly reduce the burden on police and fire departments that would otherwise have to respond to such emergencies.

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Auto clubs utilize Part 90 and 101 spectrum to dispatch emergency road service vehicles to the scene of an accident or other vehicle breakdown. These radio links make it possible for the road service vehicle to locate the trouble swiftly, and summon additional help if necessary. Unlike licensees who are in the business of providing telecommunications services, the business focus of automobile clubs is the safety of their members and the motoring public. Like most other licensees in the Part 90 and 101 private services, these radio systems are a necessary tool to provide quality services to the public.

AAA applauds the Commission's efforts to make its application processing more efficient so that applicants will be able receive more timely grants of their applications, and will have greater access to licensing information. As discussed below, AAA is concerned that certain aspects of the Commission's proposal will place undue burdens on its members and other private radio licensees, who use radio as an adjunct to their underlying business activities. With certain modifications responsive to these concerns, AAA believes the Universal Licensing System (ULS) will be a valuable improvement to the Commission's licensing process.

Mandatory Electronic Filing May Be Premature

AAA is concerned that the Commission's proposed January 1, 1999 mandatory implementation of electronic filing may be premature. Instead, AAA supports retention of a paper filing option for the foreseeable future, until electronic filing in ULS is perfected and there is 100 percent certainty that any lost data can be easily and accurately recaptured by the Commission without placing additional burdens on the public. AAA fears that any application which is filed electronically could ultimately be lost forever if the Commission's ULS license database becomes corrupted, either through hardware failure, erroneous programming, hacking, or a future conversion to a new computer system when the current software or hardware for ULS becomes obsolete and is ultimately replaced. AAA notes that the Commission has previously experienced serious computer problems in connection with

its Public Land Mobile license database which resulted in the loss of technical data. This data had to be reconstructed through the industry's tedious location and resubmission of engineering from paper copies of old applications. Additionally, AAA understands that the Wireless Telecommunications Bureau's Microwave Section is unable to issue instruments of authority for license transfers and assignments due to a malfunctioning computer system. Thus, history shows that it is difficult to accurately and permanently protect the licensing data submitted electronically.

There have been problems with the Commission's electronic short-form auction application software, as well as issues with respect to using ULS to complete the long-form applications for the 800 MHz SMR and LMDS auctions. From these experiences, it appears, at the outset, electronic filing can be fraught with technological issues. Additionally, just to access ULS, it appears that substantial financial burdens will be imposed on both large and small companies alike, in order to maintain most current computer technology necessary to ensure compatibility with the current version of the ULS system. In this regard, it appears that only certain versions of Netscape and Microsoft's Internet Explorer are fully compatible with the ULS system, as it was designed for the LMDS auction.¹ Further, ULS has apparently not yet been tested with Microsoft's Windows 98 (which is scheduled for final release in June, 1998). This operating system will be installed on most computers manufactured after July 1, 1998; it is thus uncertain that these new computers will be compatible with the Commission's ULS software.

Additionally, there are issues regarding the capability of computers operating on local area networks to dial into the Commission's wide-area network. Most medium and large businesses' computer systems are local area network (LAN) based, and as such, these work

¹ The use of earlier versions of Microsoft's Internet Explorer provided applicants with the mistaken impression that long-form auction applications (FCC Form 601 and attached exhibits) had been successfully submitted to the Commission electronically, when in point of fact only the Form 601 application was transmitted.

stations may not be able to communicate with ULS without the use of a dedicated modem and telephone line for each computer work station that would be used to prepare and make FCC filings. This additional cost could be substantial for most businesses.

As a by-product of mandatory electronic filings, AAA is concerned that its members may not be able to obtain a complete proof of filing copy of their applications or other filings, or in the event that the data file containing its electronic filing is corrupted, that the Commission will not accept a paper proof of filing copy as evidence of timely electronic filing. AAA has learned that during the submission period for the short-form applications in the 800 MHz SMR auction, applicants experienced problems transmitting their attached exhibits, even though the exhibits had purportedly been properly formatted as ASCII text files and submitted (as evidenced by the proof-of-filing copy provided by the Commission's electronic application software).² However, when the Commission announced that those certain applications were incomplete due to the non-receipt of attached exhibits, the Commission refused to accept the proof-of-filing copy of the application as evidence of timely submission, and required the applicants to resubmit their applications electronically even though there was no guarantee that the applicants would not experience the same problem with the Commission's application software.

Electronic Filing of Pleadings and Other Documents Should be Facilitated on an Optional Basis

The Commission has likewise proposed that pleadings associated with applications be filed electronically. AAA supports electronic filing as an option, but feels that the capability to make paper filings should be retained. AAA is concerned that this electronic filing will not be practicable for pleadings that require other documents as exhibits, or statements under penalty of perjury. AAA notes that many small and medium sized businesses may not be

² It appears that an intermittent software glitch prevented the Commission's computer system from recognizing certain ASCII text files with a file extension other than .TXT. This slight change, in an otherwise correctly formatted application could have prevented a qualified applicant from participating in the auction.

able to afford the equipment necessary to make legible digital copies of documents which can then be attached to their electronic pleading as an exhibit, prior to filing. Additionally, where a filer does not have access to such digital imaging hardware, AAA is uncertain as to how such a certification made by the proponent's principal would be signed (e.g., as in Petitions to Deny). Until these issues are resolved, and the equipment is readily available to the public at reasonable cost, the Commission should continue to accept pleadings on paper, in accordance with its current rules.

ULS Should Provide Preview Copies Of Electronic Filings

AAA supports the Commission's efforts to modify the ULS, to allow applicants to print "preview" copies of their applications. Many private radio licensees utilize telecommunications departments, engineering consultants and/or outside counsel for the preparation of filings with the FCC. Because these filings are prepared on the basis of information provided by the filer to preparers who may not possess first-hand knowledge, it is essential that ULS have the capability of permitting the preparer to obtain a preview copy of the filing prior to making the actual filing itself. In this way, the proposed filing can then be reviewed by the applicant, and if in order, dated and signed. With the applicant's approval, the preparer could then legitimately insert the name of the individual who signed the preview copy of the filing, and file it electronically with the Commission, with the confidence that the electronic filing of the application has been authorized by the applicant. Without the ability to print a preview copy of the application (which option was available with the Commission's Form 175 electronic software, but not with the ULS auction long-form applications), there is no effective way for the preparer of a filing to ensure that what the applicant has approved is precisely what is electronically filed.³

³ In the case of the long-form applications filed electronically in the LMDS auction, it was necessary to prepare a paper version of the application which included the exhibits, and once signed by the applicant, re-enter the data on the Form 601 into the ULS system.

Service Specific Rules Should Preserve the Streamlined Licensing Process Enjoyed by Private Radio Licensees

The FCC has proposed to streamline its rules by eliminating, where practicable, inconsistent processing rules among the different radio services. While streamlining may be beneficial for certain processing, the result would make licensees in the private radio services (who are not in the business of providing radio services to the public) subject to more rigorous regulation than in the past. For instance, under the FCC's current proposal, it appears that private radio licensees may be required to submit ownership information on an annual basis, which information had previously not been required since foreign ownership restrictions were not implicated in the private mobile services.⁴

It is respectfully submitted that conformity is not an adequate reason to subject private radio users to more strict regulations, at a time when the marketplace dictates fewer regulatory burdens, not more. There are valid reasons why Part 90 internal use licensees have not been subjected to the more onerous burdens placed on commercial service providers: Internal use licensees are generally not in the radio business, but are instead in businesses like manufacturing, delivery, or provision of emergency road services. These entities are not immersed in the FCC licensing process the same way that commercial licensees are, and often do not have the resources to have separate FCC compliance personnel on staff. Indeed, their licensing work is often handled by the equipment sales representative who sold them their radios. Moreover, these internal users are generally not subject to the foreign ownership restrictions, spectrum caps, and other rules and policies which must be imposed on common carriers in order to protect the public interest. Thus,

⁴ Additionally, AAA notes that the proposed requirement to submit ownership information on an annual basis is even an about face for the common carrier/commercial mobile services, which, for several years, have only been required to file a Form 430 Licensee Qualification Report detailing their ownership in license assignment and transfer of control applications if a current Form 430 report was not already on file. In point of fact, this requirement was eliminated for the Common Carrier Fixed Point-to-Point Microwave Service upon the adoption of Part 101 of the Commission's Rules, effective August 1, 1996.

private users are not "similarly situated" with commercial licensees regulated by the Wireless Telecommunications Bureau.

Electronic Notices to Licensees Should be Backed Up By Paper

For the above reasons, AAA opposes the use of electronic mail (E-Mail) as the sole means for official correspondence between the FCC and its licensees and applicants. While AAA acknowledges that E-Mail can be convenient and efficient for certain purposes, AAA is nonetheless concerned that an E-Mail message may not be delivered due to incompatibilities with the FCC's internet service provider and its computer system. AAA and others have experienced situations where it believed that E-Mail had been delivered, only to discover that the intended recipient did not receive the E-Mail message for whatever reason. Additionally, even if the E-Mail message is successfully delivered into the intended recipient's box, there is no certainty that the recipient will be aware of the message when he or she logs into the computer, unless this person affirmatively goes out to the internet. Further, if the intended recipient is not available (e.g., due to vacation, sickness, travel, or otherwise), no other individual would be aware of the E-Mail message, since most internet/E-Mail accounts are password protected. In this regard, the employee responsible for FCC filings may leave the Company or be reassigned, and valuable license rights may be lost before their successor learns about FCC requirements and realizes the FCC E-mails must be re-routed. For these reasons, AAA urges the FCC to continue the practice of using the United States Postal Service or other reliable delivery service for official correspondence, although telecopier and E-mail would be acceptable as a backup.

The Construction Notification Requirement Should Not Be Imposed on Private Users

AAA opposes the FCC's proposal to require licensees in the private land mobile services to file construction completion notifications, at the risk of automatic termination of their authorization. The private land mobile services operate on shared frequencies, rarely causing harmful interference to other licensees. While a construction notification would

clear the FCC's license database, private mobile licensees, who are used to the current streamlined processing of receiving an authorization and then building, would be subject to the automatic termination of their authorizations if they inadvertently failed to notify the Commission of the timely construction of their radio facilities. As discussed above, the vast majority of licensees in the private land mobile services are not telecommunications carriers, and radio is only an adjunct to their business. Because most private land mobile licensees are not intimately versed with the Commission's requirements, the Commission may receive a flood of reauthorization applications, which would tax the resources of the frequency coordinators and the Commission's staff, as well as drive expenses up for many businesses. Moreover, the safety of the employees and customers of AAA auto clubs may be jeopardized if operations are interrupted by an inadvertent failure to submit a construction notification.

Reinstatement Rights Should Be Preserved

The FCC has proposed to eliminate the current reinstatement period for licensees in the private land mobile services. AAA opposes this proposal. While the FCC has traditionally notified licensees of their impending license renewals, events occur in the business world which, for whatever reason, prevent the timely filing of the license renewal application, especially because most private radio licensees are not intimately familiar with the FCC's rules and procedures. As such, the FCC should continue its practice of permitting reinstatement applications for the private mobile services, especially since stations in the private land mobile services operate on shared channels, and the likelihood of interference is remote. Balanced against the public interest of continued radio operations, the automatic termination of licenses upon the license expiration date would be a disservice to the public.

Application Returns

AAA opposes the Commission's proposal to reduce from 60, to 30 days, the time period within which private radio applicants will be able to resubmit applications that have been returned for correction or additional information. AAA notes that in the past several months, the frequency coordinators in the industrial services have been overwhelmed by applications, thereby causing delays of up to several months in obtaining successful frequency coordination. Because of this delay, AAA is concerned that even the most diligent applicant will not be able to resubmit its application to the FCC within the 30-day period proposed by the Commission. The 60-day period currently in use allows for sufficient research and verification of issues so that the application can be appropriately amended and submitted to the frequency coordinator for recoordination for refiling with the FCC. Reducing the period by 30 days will place an undue burden on most private radio licensees, who must rely on outside assistance with respect to their radio systems, thereby further delaying final approval of their proposal if the application must be filed anew and go back to the rear of the processing line.

Ownership Information

The FCC has proposed to collect ownership information from all wireless applicants, including applicants in the private land mobile services. AAA believes that this requirement will pose an undue burden on licensees in the private, non-auctionable radio services. Currently, no ownership information is collected from private radio licensees, since such information is not required by the Communications Act, even though the current application form (FCC Form 600) requests certain information of commercial mobile providers. By requiring additional ownership information that is not relevant to the private radio services, the Commission is substantially increasing the regulatory burden on its licensees to provide detailed ownership information that could be several layers deep. Such a requirement would be unwieldy. For these reasons, AAA urges the Commission to retain the status quo with

respect to the private, non-auctionable radio services.

There are a number of instances where the same application forms are used by entities with differing disclosure requirements, those entities with a reduced disclosure burden simply need not answer the inapplicable questions. See, e.g., FCC Form 600 Main Form, Items 30, 31, 32, and 33. Thus, there is no need to force additional filing and disclosure burdens on private user licensees, merely for the sake of conformity.

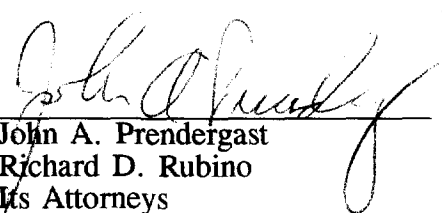
Conclusion

In light of the foregoing, it is respectfully requested that the Commission delay implementation of mandatory electronic filings, ensure that it is possible to make preview copies of electronic filings prior to filing, retain the current private land mobile application return procedures and license reinstatement procedures, dispense with the proposed requirement that private radio applicants provide detailed ownership information, and process transactional applications as rapidly as possible.

Respectfully submitted,

**THE AMERICAN AUTOMOBILE
ASSOCIATION**

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